



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]

DECISION

CWA/155571

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on June 10, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner remains functionally eligible for the Wisconsin Include, Respect I Self-Direct (IRIS) program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Susan Hanks

Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been eligible for the Include, Respect I Self-Direct (IRIS) program thus has been determined to require the nursing home level of care as that term is used in the Family Care and IRIS programs.
3. The Wisconsin IRIS Program notified Petitioner in February 2014 that it was ending his participation in the program because a Functional Screen completed on or about February 5, 2014 indicated that he does not meet the nursing home level of care. Petitioner might be Family Care Program (FCP) eligible for non-nursing home services. The agency results from the assessments found that Petitioner

is independent with all of his activities of daily living (ADLs) and limited assistance with the instrumental activities of daily living (IADLs). The agency did not find that the degree of assistance was sufficient to maintain functional eligibility for the nursing home level of care.

4. Petitioner is 28 years of age (██████████). He lives alone in the community in a single family residence that he owns. He suffered a traumatic brain injury at age 21. This resulted in impaired decision making and he suffers from depression and some self injurious behavior. He does not take any medications. He is medically stable.
5. Petitioner is independent as to his activities of daily living - bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.
6. Petitioner requires some assistance with meal preparation and laundry. He has a driver's license. He manages his own budget, keeping track of his bills using a computer and/or smart phone though his father actually writes the checks. He is able to use the phone. He does not work. He does not receive any overnight care.
7. Petitioner was subject to a guardianship but it was reversed.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The Bureau of Long-Term Support seeks to discontinue Petitioner's enrollment in the Wisconsin IRIS program, a fee-for-service alternative to the Family Care and Partnership programs for individuals requesting a long-term care support program in Family Care counties. *Medicaid Eligibility Handbook*, § 37.1.1. IRIS, which stands for "Include, Respect I Self-Direct," requires potential recipients to reside in a county with Family Care, have a nursing home level of care, and meet MA Waiver financial and non-financial criteria. *Id.*, 37.1.3.

The nursing home level of care, which is also referred to as the comprehensive level of care, is described as follows at Wis. Admin. Code, § DHS 10.33(2)(c):

A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting ***both*** of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.

b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Admin. Code, § DHS 10.33(2)(c). Emphasis added.

Activities of daily living, or ADLs, refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” *Wis. Admin. Code, § DHS 10.13(1m)*. Instrumental activities of daily living, or IADLs, refer to “management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” *Wis. Admin. Code, § 10.13(32)*

Agencies must determine eligibility using a uniform functional screening tool prescribed by the Department. *Wis. Admin. Code, § DHS 10.33(2)(a)*. The problem with this requirement is that the Department has changed the screening tool to better comply with the federal government’s long-term waiver provisions, but it has not changed the administrative code to reflect these changes. *See DHA Decision No. FCP-44/115906*. Because the administrative code has the force of law, I must follow it rather than the screening tool.

The evidence is clear that Petitioner can perform his own ADLs. Further, though he needs some assistance with meals, laundry and, perhaps, some money management, he does not require the degree of assistance with his IADLs so that he meets the tests noted above.

The question here then becomes whether he might remain eligible under *Wis. Admin. Code, § DHS 10.33(2)(c)6*. Restating the requirements of that section as it relates to Petitioner - does he have a complicating condition that limits his ability to independently meet his needs as evidenced by requiring frequent social intervention to safely maintain an acceptable health or developmental status and has impaired decision making ability exhibited by physical abuse of self or others, self neglect or resistance to needed care?

This is a rather close call. He has a complicating condition – the traumatic brain injury. He needs some help (e.g., he is not as handy with his home repairs and renovations as he suggests – his father completes a lot of these tasks for him) and may not be quite as independent as the functional screening indicates. He does exhibit some self injurious behavior – he has had cutting episodes and drinks excessively. Nonetheless, he has been able to demonstrate cognitive and neurologic improvements such that he been able to obtain a driver’s license, had a guardianship reversed, owns his own home and has computer and technology skills that enable him to manage finances and other aspects of life. I am concluding that he no longer meets the nursing home level of care and is, therefore, no longer eligible for the Wisconsin IRIS program.

Petitioner should note, however, that he may be eligible for some of the services he now receives from IRIS through the Family Care program. In Milwaukee County the contact information for that program is:

Disability Resource Center (DRC) of Milwaukee County
 Phone: (414) 289-6660
 Email: InfoMilwDRC@milwcnty.com
 Office Location:
 1220 W. Vliet Street, Suite 300
 Milwaukee, WI 53205

CONCLUSIONS OF LAW

That Petitioner is no longer eligible for IRIS because he does not meet the nursing home level of care.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

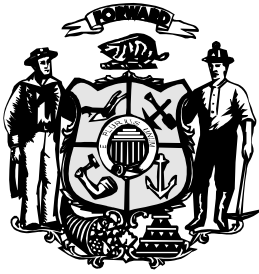
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of June, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 16, 2014.

Bureau of Long-Term Support